

No. B295935

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION EIGHT**

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CITY OF SANTA MONICA,

*Appellant-Defendant,*

v.

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

*Respondents-Plaintiffs.*

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**DECLARATION OF KAHN SCOLNICK IN SUPPORT OF  
APPELLANT CITY OF SANTA MONICA'S REPLY IN SUP-  
PORT OF ITS MOTION FOR CALENDAR PREFERENCE**

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Appeal from the Superior Court for the County of Los Angeles

The Hon. Yvette M. Palazuelos, Judge Presiding

Superior Court Case No. BC616804

Gov't Code, § 6103

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*Attorneys for Appellant-Defendant, City of Santa Monica*

**DECLARATION OF KAHN SCOLNICK**

I, Kahn Scolnick, declare as follows:

I am a partner with the law firm Gibson, Dunn & Crutcher LLP, counsel for the City of Santa Monica (the “City”) in the above-referenced appeal. I am authorized to practice law in the State of California and submit this declaration in support of the City’s reply in support of its motion for calendar preference. The following matters are based upon my personal knowledge, and if called to testify to such facts, I could and would do so competently.

1. Based on my review of this Court’s online docket for this case on May 3, 2019, the list of “Future Scheduled Actions” includes an entry with the description of “Record on appeal filed,” with a corresponding date of June 24, 2019.

2. Attached as Exhibit A is a true and correct copy of email correspondence that I had with Respondents’ counsel in advance of filing the City’s motion for calendar preference on April 29, 2019. The most recent email in Exhibit A was my email to Respondents’ counsel on Friday, April 26, 2019, at 1:10 p.m. To date Respondents’ counsel has not responded to my April 26 email.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on May 3, 2019 in Los Angeles, California.



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Kahn Scolnick

# **EXHIBIT A**

**From:** [Scolnick, Kahn A.](#)  
**To:** [Kevin Shenkman](#); [Ellery Gordon](#); [Milton Grimes](#); [Robert Rubin](#); [Rex Parris](#)  
**Cc:** [McRae, Marcellus](#); [Adler, Daniel R.](#); [Mike Baller](#); [Scolnick, Kahn A.](#)  
**Subject:** RE: PNA v. Santa Monica  
**Date:** Friday, April 26, 2019 1:10:38 PM  
**Attachments:** [Preference motion.pdf](#)

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Kevin –

I'm stuck in meetings today, so I'm just sending our current draft of the motion that we will file on Monday.

"Calendar preference" is indeed the correct terminology/relief in the Court of Appeal -- see, for instance, CRC 8.240, which states, "A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, 'calendar preference' means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument." We can't set a briefing schedule yet because we don't have the reporter's transcript, and we can't yet commit to how much time we're going to need for the opening/reply briefing. But the rules require us to seek calendar preference promptly, so we're doing it now.

If you'd prefer, we'd be happy to include a footnote saying something to the effect that plaintiffs do not oppose the request for relief but do not necessarily agree with the specific language the City has used to request it.

We're going to file this before close of business on Monday, so please let us know asap if we can say it is unopposed. Thanks.

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**From:** Kevin Shenkman <[shenkman@sbcglobal.net](mailto:shenkman@sbcglobal.net)>  
**Sent:** Thursday, April 25, 2019 9:44 PM  
**To:** Ellery Gordon <[egordon@parrislawyers.com](mailto:egordon@parrislawyers.com)>; Milton Grimes <[miltgrim@aol.com](mailto:miltgrim@aol.com)>; Robert Rubin <[robertrubinsf@gmail.com](mailto:robertrubinsf@gmail.com)>; Rex Parris <[rrex@parris.com](mailto:rrex@parris.com)>; Scolnick, Kahn A. <[KScolnick@gibsondunn.com](mailto:KScolnick@gibsondunn.com)>  
**Cc:** McRae, Marcellus <[MMcRae@gibsondunn.com](mailto:MMcRae@gibsondunn.com)>; Adler, Daniel R. <[DAdler@gibsondunn.com](mailto:DAdler@gibsondunn.com)>; Mike Baller <[mballer@gbdhlegal.com](mailto:mballer@gbdhlegal.com)>  
**Subject:** Re: PNA v. Santa Monica

[External Email]

Kahn,

I am unclear on what exactly you are seeking. I have had experience "expediting" an appeal, but not "calendar preference," and I surmise that the term "calendar preference" can describe a variety of scheduling mechanisms to reach a decision more quickly.

Plaintiffs too would like to see a prompt resolution of Defendant's appeal, and, at the same time, ensure sufficient time to prepare a responsive brief. To that end, perhaps we should discuss stipulating to a briefing schedule that will ensure a decision sufficiently in advance of the statewide general election in 2020. I have reviewed the CCP sections you reference in your email below, and none seem to be applicable (other than perhaps by analogy) to our case, so calendar preference may not be the right option for that reason also.

Please feel free to call me at 310-457-0970 to discuss.

-Kevin

On Wednesday, April 24, 2019, 06:50:17 PM PDT, Scolnick, Kahn A. <KScolnick@gibsondunn.com> wrote:

Hope everyone has been well. The City is going to move in the Court of Appeal for calendar preference under CCP sections 35, 44, and 36(e) – asking for the Court to issue a decision by July 10, 2020, to the extent practicable (based on the timing of the completion of briefing, etc.). If we get a decision by then, and assuming no further proceedings in the Supreme Court, then we'd know one way or the other whether a November 2020 election could be held on an at-large basis, or whether it still would need to be district-based using Ely's district map, and there would be time for the City to plan accordingly.

Please let us know by COB Friday whether plaintiffs will oppose this relief, or whether we can tell the Court that plaintiffs do not oppose. I would think that calendar preference would be of interest to plaintiffs, too, under the circumstances, but that's obviously your call.

Cheers.

**Kahn A. Scolnick**

**GIBSON DUNN**

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## **PROOF OF SERVICE**

I, Daniel Adler, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On May 3, 2019, I served the following document(s):

### **DECLARATION OF KAHN SCOLNICK IN SUPPORT OF APPELLANT CITY OF SANTA MONICA'S RE- PLY IN SUPPORT OF ITS MOTION FOR CAL- NDAR PREFERENCE**

on the parties stated below, by the following means of service:

#### **SEE ATTACHED SERVICE LIST**

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 3, 2019, in Los Angeles, California.



---

Daniel Adler

**Respondents' Counsel**

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**Method of service**

Electronic service

Electronic service

Electronic service

Electronic service

**Trial court**

Hon. Yvette M. Palazuelos  
Judge Presiding  
Los Angeles County Superior Court  
312 North Spring Street  
Los Angeles, CA 90012  
Tel: 213-310-7009

Mail service